

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CONSTELLATION NEWENERGY, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
POWERWEB, INC.	:	NO. 02-2733

ORDER

AND NOW, this            day of August, 2004, it is hereby  
ORDERED that the motion in limine by Powerweb, Inc. to preclude  
testimony by Michael B. Rosenzweig, Ph.D., is DENIED.

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Defendant and cross-claimant Powerweb, Inc.  
("Powerweb") makes several arguments in support of its motion to  
prevent the testimony of Michael B. Rosenzweig, Ph.D., an expert  
proffered by plaintiff Constellation NewEnergy, Inc.  
("NewEnergy").

Powerweb contends that the opinions offered by Dr.  
Rosenzweig will not assist the trier of fact. However, there can  
be little doubt that Dr. Rosenzweig has the requisite background  
to develop expert opinions regarding a number of the aspects of  
this case. He has a Ph.D. in Applied Mathematics and has spent  
the past twenty-five years performing economic analyses in the  
energy industry.

Powerweb also argues that Dr. Rosenzweig's opinions are  
unreliable. We are again unconvinced. Aside from his extensive  
experience in the energy industry, we note that a number of his

views in this case were reliable enough that they convinced Powerweb's own proffered experts to modify their original expert reports. Furthermore, notwithstanding Powerweb's claim that "Dr. Rosenzweig's opinions are not based upon sufficient facts or data," Mem. at 8, we think that his review of thousands of pages of testimony and documents was sufficiently thorough to establish his reliability as an expert in this case.

We have carefully considered Powerweb's remaining arguments for the preclusion of testimony by Dr. Rosenzweig, and find none of them to be convincing. Accordingly, Powerweb's motion will be denied, and the court shall not conduct a Daubert hearing for this expert witness. This determination, however, does not grant NewEnergy the freedom to ask Dr. Rosenzweig questions on any topic it chooses. Dr. Rosenzweig admits in his deposition that he is not an expert in such fields as software development, internet communications, and metering technology. Powerweb may, of course, object at trial to testimony by Dr. Rosenzweig in certain areas to which his expertise does not extend.

BY THE COURT:

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J.